

LIMITATIONS OF THE LEGAL AID COUNCIL OF NIGERIA: NEED FOR ACTION PLAN*

Abstract

Equality of all persons before the law is a notorious human right principle geared towards ensuring that all persons regardless of their financial, mental, social and political status are accorded equal protection under the law. Enjoyment of this equal protection is largely dependent on the availability of equal opportunities to access the law. Regrettably, economic inequality has hampered the accessibility of many Nigerians to the law, and invariably their right to equality before the law which has necessitated the birth of the Legal Aid Council to render help to the indigent within the justice system. Despite the establishment of the Council and the notable efforts made by it in the discharging its functions under the Legal Aid Act and other relevant laws, the gap between the objectives of the Council and their fulfilment remains conspicuously wide, hence, a study on the limitations of the Council with a view to recommending an action plan for realisation of the objectives of the Council, becomes imperative. The major challenge faced by the Council is insufficiency of funds to effectively carry out its mandate. It is, therefore, recommended inter alia, that government should step up with the budget allocated for legal aid and also liaise with non-governmental agencies for support in this area.

Keywords: Legal Aid, Access to justice and Action Plan.

1. Introduction

The quest for justice is innate in man and failure to satisfy it is a roadmap to an anarchical state. Thus, a democratic society anchored on rule of law is inseparable from the demand for justice. One of the cardinal purposes of law is to serve the ends of justice which can only be achieved if accessible. The inaccessibility of justice undermines the very essence of law and turns it into an instrument of oppression in the hands of the rich against poor, particularly in Nigeria where the poverty rate has continued to rise. Unfortunately, justice is not free. There is no gainsaying the fact the cost of justice at all levels in Nigeria is high. Sometimes, the ‘unofficial’ fees paid are more than the official fees paid. Again, these ‘unofficial’ fees where demanded but not paid, can frustrate and stifle one’s efforts to obtain justice. It, therefore, requires some level of financial capacity to fund the course of justice which a great number of people lack in the present global economic meltdown. Economic inequality finds expression in the daily struggles of a large majority of the poor for survival in the face of the accumulation of obscene amounts of wealth by a small number of individuals.¹The fundamental objective of the Council is to bridge the gap between the rich and the poor by ensuring that lack of money does not deny any person access to justice. Thus, Legal aid is the product of inequality before the law induced by poverty.

2. Legal Aid as a Concept

Legal aid is the professional legal assistance given, either at no charge or for a nominal sum, to indigent persons in need of such help,² usually through government funds and sometimes, gifts from public and private persons. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems defines legal aid as ‘legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require.’ Furthermore, legal aid is intended to include concepts of ‘legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes’³ The term ‘legal aid’ is commonly used interchangeably with the term ‘*pro bono*’, *albeit*, they are not the same in meaning. *Pro bono* is short for ‘*Pro bono Publico*’ a Latin phrase which means ‘for the public good’. It is a term often used in the description of the provision of free legal services by lawyers to the people in need of such services, who are unable to afford it. The difference between legal aid funded services and *pro bono* services is that whilst legal aid is funded or sponsored by the

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¹Mayah, E., Mariotti, C., Mere, E., Odo, C.O., ‘Inequality in Nigeria :Exploring the Drivers’, <<https://www.oxfam.org/en/research/inequality-nigeria-exploring-drivers>>, accessed on 3/12/2021

² Legal aid, <https://www.britannica.com/topic/legal-aid> accessed 20/11/2021

³ United Nations (2014), Early access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners, New York, at p. 9

Government, *pro bono* services are provided by lawyers in their professional capacities without the anticipation or receipt of payment for such services.⁴

Legal aid is an essential element of a fair, humane and efficient justice system that is based on the rule of law and a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the justice process.⁵ A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law⁶. Legal aid services are not limited to the court room as popularly perceived by many. They can be rendered wherever there is administration of justice and legal representation is needed, this includes the law enforcement agencies like the police, the correctional service centres and other quasi-judicial institutions and tribunals. The first providers of legal aid are lawyers, but states are allowed to involve a wide range of stakeholders as legal aid providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia.⁷

3. Right to Legal aid in Nigeria

The necessity of justice in any given trial is sacrosanct and a major step at achieving it, is by providing equal legal representation for parties in any given case.⁸ This remains the hallmark of the constitutional right to fair hearing provided in *section 36* of the Nigerian Constitution⁹ and other international, regional and national laws.¹⁰ In fact, Oputa JSC in *Josiah v. State*¹¹ succinctly put it thus: ‘The right to counsel is thus at the very root of, and is a necessary foundation for a fair hearing. The ordinary layman, even the intelligent and educated layman is not skilled in the science of law and he therefore needs the aid and advice of counsel’. Law is rooted in the age long principle *ubi jus ubi remedium*--where there is a right, there is a remedy; and this is the very foundation of the concept of state. Accordingly, every state has a duty to ensure that any person whose rights or freedoms are violated shall have an effective remedy and the right to have the remedy determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State,¹² on the principles of justice. Fair hearing is one of the twin pillars of justice. To be heard, you must either stand for yourself or be represented by any counsel of your choice. Where one chooses to be represented by a lawyer but cannot afford the services of one, the law requires that a Legal Practitioner be assigned to him without payment, particularly in proceedings involving capital offences. Offering such free legal representation is the kernel of legal aid.

States have an international obligation to guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution. In line with this obligation, the Constitution of the Federal Republic of Nigeria provides for the right of a litigant to legal representation of his choice and to legal aid where he cannot afford one. However, this right to counsel under the Constitution specifically relates to criminal defence of a person charged with an offence and actions for breach of fundamental rights. Section 36(6)(b) and (c) of the Constitution of the Federal Republic of Nigeria¹³ provides that every person who is charged with a criminal offence shall be entitled to the following rights: (a) Be given adequate time and facility to prepare for his defence; and (b) Defend himself in person or by a legal

⁴ Ayanru, A., ‘A Review Of Salient Issues In The Interplay Between Legal Aid And Pro Bono Legal Services In Nigeria, . <https://www.mondaq.com/nigeria/human-rights/679804/a-review-of-salient-issues-in-the-interplay-between-legal-aid-and-pro-bono-legal-services-in-nigeria>> accessed 30/1/2021

⁵United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly, (A/67/458).

⁶ A(3)

⁷ A(9)

⁸ Babalola, A., and Omidoyin, T. J., ‘Reflections on the Legal Aid Architecture in Nigeria and the Syndrome of Unequal Access to Justice’, [2020], *Journal of Law and Judicial System*, (Volume 3, Issue 1), 16-27.

⁹ The 1999 Constitution of the Federal Republic of Nigeria(as amended)

¹⁰ See Article 6 of the Universal Declaration of Human Rights, 1948, Article 14(2)(d) of the International Covenant on Civil and Political Rights

¹¹ [1988] 1NWLR (pt.125) at 140 SC

¹² Article 2 International Covenant on Civil and Political Rights

¹³ 1999 (As Amended)

practitioner of his own choice. The Constitution further makes a clearer and fundamental provision supporting legal aid in Section 46(4)(b)(i) and (ii) of the Nigerian Constitution that:

(4) The National Assembly-

(b) Shall make provisions-

(i) For rendering financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view of enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) For ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

It is deducible from the two sections cited above, that legal aid is restricted only to defence of criminal matters (it does not extend to prosecution of crimes) and civil action on breach of fundamental rights. Nevertheless, legal aid has been applied to other civil actions by Acts of the National Assembly. The National Assembly pursuant to its legislative powers under the Constitution has enacted laws to grant free legal assistance to indigent persons both in civil and criminal proceedings and in other areas where the ends of justice is to be served, the principal law being the Legal Aid Act (LAA) of 2011. *Section 8(1)* of the LAA provides that:

the grant of legal aid, advice and access to justice shall be provided by the Council in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services subject to merits and indigence tests for the parties.

Once a person is certified indigent after going through the indigence tests, the Council is under a duty to grant him free services of legal representation. The Administration of Criminal Justice Act also provides for the right of the Suspect to free legal consultation by the Legal Aid Council of Nigeria where the Suspect cannot afford one.¹⁴ The Supreme Court Act¹⁵ in *Section 28* provides that ‘in respect of proceedings at the Supreme Court that the Supreme Court may at any time assign counsel to the appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him obtain that aid’.

Of all the objectives of granting legal aid, the most prominent is access to justice to all irrespective of the financial capabilities. Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable¹⁶ Access to justice refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within the legal system.¹⁷ Access to justice does not mean a grant of a person’s claim or defence; rather it means that he is allowed the requisite opportunity to have his rights determined whether or not in his favour. It also does not mean to initiate the course of justice and abandon it halfway. It means that the legal assistance be offered to the logical conclusion of the case for which it is rendered. In this context therefore, Black’s Law Dictionary¹⁸ defines justice as: ‘proper administration of the law which jurisprudentially, implies the constant and perpetual disposition of legal matters on disputes to render everyman is due.’ Thus, for a meaningful administration of justice, the importance of legal aid cannot be over-emphasised

4. Origin of Legal Aid

Prior to sustained, institutionalized efforts to provide legal aid to the poor, organizations and individual lawyers provided legal assistance to those who could not afford an attorney.¹⁹ Though legal aid is a fairly recent global trend from one country to another, its origin is far away rooted in the English

¹⁴ See *Section 6* of the Administration of Criminal Justice Act, 2015

¹⁵ Cap.S15, LFN 2004

¹⁶ Access to Justice, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> accessed 20/11/2021

¹⁷ Chinyere A. C., ‘Access to Justice in Nigerian Criminal and Civil Justice Systems’ <https://legalpediaonline.com/access-to-justice-in-nigerian-criminal-and-civil-justice-systems/> accessed on 30/11/2021

¹⁸ Garner 1979, p.776

¹⁹ Alan Houseman, A. & Perle, L. A., ‘Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States’, <https://www.clasp.org/sites/default/files/publications/2018/05/2018_securingequaljustice.pdf> accessed on 30/11/2021

legal system.²⁰ In England, the right of an indigent person to the aid of the state was recognised far back as 1495 and was later granted by the High Court and Court of Appeal of England, and was later under the Rules of the Supreme Court of England.²¹ Although legal aid in civil proceedings was granted to the poor in England right from the 15th century, however, legal aid in criminal matters was not granted to the poor accused that is standing trial until 1903 under the Poor Prisoners Defence Act 1903. Presently, the legislation that governs legal aid service in England is the Access to Justice Act, 1999 and its subsidiary legislation.²² Much earlier in Scotland however, a statute of 1424 established the poor people's roll, whereby a person who has a civil cause with a reasonable chance of success, but which had no money to prosecute, qualified for legal aid by reason of poverty and was entitled to have his case conducted gratuitously by a counsel acting for the poor.²³ The idea of legal aid in the modern sense owes its origin to the account by Magure on the arraignment of a litigant called Alice. The account shows that upon arraignment, Alice requested for assistance thus: 'Alice can get no justice at all, seeing that she is poor and this Thomas is rich.' Her further plea was: 'For God's sake, Sir, Justice, think of me, for I have none to help me save God and you'.²⁴

In Nigeria, legal aid started by legal practitioners rendering legal aid and advice to indigent persons in civil and criminal matters on the ground of compassion i.e., *pro bono*.²⁵ However, the concept was said to have been birthed in 1961 when Sir Adetokunbo Ademola, the Chief Justice of Nigeria at the time, during the African Conference on the Rule of Law held in Lagos, pointed out the hollowness of a constitutional right to a fair hearing, if the financial aspect of access was ignored. That statement was the first official public acknowledgement of the need and desirability for legal aid in Nigeria. This led to a Bill prepared by the then Honourable Attorney-General, Dr. T.O. Elias, entitled Legal Aid and Advice Act 1961 for Parliament, in order to formally establish legal aid in Nigeria. The Bill sought to make provision for the establishment and operation of a scheme for the granting in proper cases, legal aid and legal advice, to people with low income, who could not otherwise afford to procure them for the enforcement or vindication of a legitimate right or for the purpose of obtaining a just relief. Unfortunately due to the Nigerian Civil War the Bill did not see the light of day. This effort later gave rise to the birth of the Nigerian Legal Aid Association. The Association was made up of legal luminaries who took it upon themselves to champion the cause of providing legal aid for poor Nigerians. The efforts of the Association later culminated in the promulgation of the Legal Aid Decree or Legal Aid Act No. 56 of 1976. This Act formally introduced the legal aid scheme into law and it eventually was incorporated into the 1979 Constitution of the Federal Republic of Nigeria. The 1976 Act has been repealed and replaced with the Legal Aid Act, 2011.²⁶

5. The Legal Aid Council of Nigeria and its Limitations

The limitations shall be discussed in the course of examining the establishment, mandate and modus operandi of the Council.

Establishment and Functions of the Council

The Legal Aid Council is a creation of the Legal Aid Act, 2011. The Council is a body corporate charged solely with the responsibility of providing legal aid, advice, and access to justice in respect of persons entitled thereto.²⁷ The Council shall carry out its functions in three broad areas viz: Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services subject to merits and indigence tests for the parties.²⁸ Criminal Defence Service offers assistance to indigent persons involved in criminal investigation or proceedings arising from any charge on²⁹: Murder of any degree or culpable homicide punishable with death; Manslaughter or culpable homicide not punishable with death; Maliciously or wilfully grievous hurt or wounding or inflicting grievous bodily harm; Assault occasioning actual bodily harm or Criminal force occasioning actual bodily harm; Common assault; Affray; Stealing; Rape.; Armed robbery; and Aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit any of the offences listed above. The scope of criminal defence service is limited not only in terms of the number of offences to receive such

²⁰ Malemi, E.O., *The Nigerian Constitutional Law*, (Lagos, Princeton Publishing Co., 2006), 414

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Abegunde, B., and Joshua, O.T., 'Legal Aid System in Nigeria and the Right to Equal Access to Justice'.

²⁵ *Ibid.*

²⁶ 'The Historical profile of the Legal Aid Council of Nigeria', <<https://legalaidcouncil.gov.ng/historical-profile-of-the-council/>>accessed on 30/11/2021

²⁷ Section 1

²⁸ Section 8(1)

²⁹ See Second Schedule to the Act.

service but also as to the law. Only crimes contained in the Criminal and Penal Codes were referred to. Apart from the Criminal and Penal Codes there are other Criminal laws and crimes provided under different statutes such as the Economic and Financial Crimes Commission (Establishment) Act³⁰, the Corrupt Practices and Other Related Offences Act³¹, the Violence Against Persons (Prohibition) Act³², Terrorism Prevention (Amendment) Act³³, the Child's Right Act³⁴ amongst others.

In the discharge of its functions under the Act, the Council has a mandate to conduct through its Criminal Defence Service routine inspection of prisons, police cells and other places where suspected persons are held in order to assess the circumstances under which such persons are detained.³⁵ The courts and law enforcement agencies are expected to support the Council in carrying out its functions in criminal defence. Accordingly, a duty is also imposed on the police and courts to inform a suspected person of his entitlement to the services of a legal practitioner from the moment of arrest and if such suspect cannot afford the services of a legal practitioner to notify the Council to represent him if he so desires.³⁶ Where a suspect opts to make an extra judicial statement, *Section 17(2)* of the Administration of Criminal Justice Act also provides that 'Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organisation or a Justice of the Peace or any other person of his choice. The courts have been consistent in practice of this principle. Same cannot be said of the police. Sometimes, legal practitioners are denied access where a suspect is making his statement even where the suspect so requests to be represented. Due to the aggressive attitude of the police and other law enforcement agencies, many lawyers do not go the police to avoid acts of indignity and disrespect regularly meted to them. It is not clear why this provision is restricted only to the police and the court, knowing full well that these institutions are not the only institutions involved in the justice system. There are others like the Department of Security Services, (DSS), the Economic and Financial Crimes Commission who have been inundated with criminal investigations. We suggest that same duty be extended to other law enforcement agencies. The Council and the lawyers designated by it shall be entitled to have access to and interview suspects detained in prisons, police stations, or any other places of detention in Nigeria and such designated lawyers shall be entitled to be present during the interrogation of the suspects in accordance with the rights guaranteed to suspects under the Constitution. The institutions involved are always encouraged to grant the Council maximum support in this area.

The Civil Litigation Service shall assist the indigents in accessing justice, legal advice, representations in courts/tribunals for the purpose their defence; enforcement and protection of their rights, obligations and interests as guaranteed by the laws of the land.³⁷ The scope of the responsibilities of the Council when it comes to civil litigation service are: civil claims in respect of accidents including employee's compensation claim; claim covering breach of fundamental rights under the Constitution of the Federal Republic of Nigeria, 1999 and civil claims arising from criminal activities against a person who is qualified for legal aid under the new Act. This too, is also restrictive. Other contractual and tortuous claims are not covered including matrimonial claims.

The Council shall establish, maintain and develop a service known as Community Legal Service for the purpose of promoting individual services and in particular, for ensuring that individuals have access to services that effectively meet their needs. Community Legal Services include the provision of general information about the law and legal system and the availability of legal services; assistance; in preventing or settling disputes about legal rights and duties; assistance in enforcing decisions by which such dispute are resolved; assistance in financial support and rendering; and assistance with regards to claims against public authorities, private organizations and individuals subject to the Director-General's reserve the right to set the limit of such assistance.³⁸ The services offered in litigations by the Council are expected to span from the period of commencement of the action until it is finally determined by the court on appeal, unfortunately, many of them die a natural death for paucity of funds³⁹

³⁰ 2004

³¹ 2000

³² 2015

³³ 2013

³⁴ 2003

³⁵ *Section 19(1) of the Act*

³⁶ *Section 19(2)*

³⁷ See Section 8(3) and (4)

³⁸ Section 8(7)

³⁹

Persons qualified for legal aid

There are three categories of persons⁴⁰ who can benefit from the services offered by the Council. These are:

- Income earners of less than the national minimum wage.
- Persons whose earning exceed the national minimum but have been granted legal aid service by the Board may however, in exceptional circumstance. What constitutes exceptional circumstance was not defined by the Act. Presumably, this is to be discretionally determined by the Board.
- Persons who receive legal aid on a contributory basis subject to the power of the ⁴¹Council to recover the cost of the legal aid.

In each of the cases above mentioned, it must be shown at the point of granting such aid that the intended beneficiary is indigent. In carrying out the indigence test, the Council is expected to ascertain the means of the person by taking into account his income and real property.⁴² The use of national minimum wage as a yardstick for determining indigence presupposes that foreign nationals such as refugees and migrant workers, are not entitled to legal aid in Nigeria except maybe where they are under Nigerian government's employment. On the contrary, international law on legal aid requires that legal assistance be extended to foreign nationals particularly the vulnerable ones such as refugee and migrants.⁴³ Principle 6(26) of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly, states that:

States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.

It is noteworthy that considering the present-day economic reality and inflation, so many people who earn more than the national minimum wage are yet impoverished. Therefore, the requirement of the national minimum wage as a qualification for legal aid may cause hardship and prevent so many Nigerians from accessing justice.⁴⁴ However, in a bid to further enhance access to justice for members of the society, legal aid may be granted on a contributory basis to persons whose earning exceeds the national minimum wage up to ten times provided the Governing Board approves same.⁴⁵ While it is a good thing that the Council can grant legal aid to persons earning above the national minimum wage, it is important to state that not every person whose earning is above the national minimum wage would be able to benefit from this because of the proviso that it must be on contributory basis, as they may not find this affordable. Again, it will take the Board to approve such an application for legal aid for persons who earn above the national minimum wage and this could be very cumbersome and time consuming. There should be no restriction whatsoever, no requirements fixed for access to legal aid by all Nigerians.⁴⁶

Staff of the Council

The Council discharges its duties under the Act through Panels of Legal Practitioners who are willing to act for persons receiving legal aid either gratuitously or otherwise. These include private legal practitioners, salaried practitioners and practitioners on National Youth Service Corps. The private legal practitioners who undertake *pro bono* matters shall register them with the Council.⁴⁷As an incentive to such practitioners, the Act has made it one of the requirements for elevation to the rank of a Senior Advocate of Nigeria.⁴⁸ These legal practitioners are to be paid for the services rendered from the Legal Aid General Fund as determined by the Council.⁴⁹ This provision attracted many Legal Practitioners in the past to legal aid services. Unfortunately, the Council has not been able to sustain this practice of paying these legal practitioners due to paucity of funds. Consequently, many lawyers have lost interest in rendering their services to Council.

⁴⁰ Section 10(1)

⁴¹ See

⁴² Section 11(1)

⁴³ Principle 10(32) of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly, (A/67/458).

⁴⁴ Gbolagunte, O., 'Refurbishment of Legal Aid in Nigeria', in Adebayoa, A. A. , Ugowe, A. O., 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act' , [2019] *Brawijaya Law Journal* (Vol. 6 No.2), 147.

⁴⁵ Ibid.

⁴⁶ Agbamuche-Mbu M., et.al., Legal Aid Should be Elevated to the Level of Fundamental Right, This Day Newspaper, Nigeria of 10 May 2016

⁴⁷ Section 18(1) of the Act

⁴⁸ Section 18(2)

⁴⁹ Section 15(1) and (3)

There are Legal Practitioners who are in the Council's payroll. These are employees of the Council. Unfortunately, the inadequacy in the remuneration of these salaried staff has led to quick exit from the Council of very competent staff and has further discouraged Legal Practitioners from applying for employment in the Council. This is the reason the Council continues to be understaffed and unable to carry out their functions effectively. The Act, for obvious reasons, has retained and heavily relied the use of Youth Corps Lawyers in the discharge of its functions though without payment of professional fees. The Council, however, can pay stipend and travelling allowance to the Corps members.⁵⁰ Majority of the courts in the states are outside the state capitals where the office of the Council is situated thereby requiring these Lawyers to travel sometimes to very far distances to attend to matters for the Council. It is doubtful whether this stipend which is usually a paltry sum is still being paid to these lawyers who have proven to be useful to the Council regardless of their little experience in the practice of law. While the use of Lawyers on National Youth Service is commendable for the purpose of training them, saddling these young practitioners with the major responsibilities of the Council is not advisable as legal representation at all levels require quality experience which these lawyers who are usually within their first year of call may not likely possess. The Council also works with non-governmental organizations and law clinics that are engaged in the provision of legal aid or assistance to persons who are entitled to legal aid under this Act. There are also paralegal staff who are granted licences to render such services in appropriate situations.⁵¹ These are basically support staff employed to assist the Legal Practitioners in their duties. Inadequate remuneration of these panels of legal practitioners has greatly limited the productivity of the Council by constant want of manpower.

The Intersection between the Legal Aid Council of Nigeria, Private Legal Practitioners and other Justice enabling Institutions

The Act encourages co-operation of the Council with other stakeholders involved in the justice delivery system such as the Judiciary, Attorney General of the Federation or of any State, the Department of Public Prosecution, the Inspector-General of Police, the Commissioners of Police, Prison Authority or other agencies as may be appropriate, to ensure speedy trial of cases being handled by the Council. Though there have been seemingly an expression of desire by these stakeholders to work in harmony with the Council to achieve its objectives, some of them are also trying to grapple with the same challenges faced by the Council in the discharge of their own functions which in effect has made it impracticable for them on many occasions, to actively support the Council. For instance, these stakeholders all complain of lack of resources to work with. In some of the courts, the litigants are made to buy files for their matters because government cannot provide for them. Some process clerks go to the extent of telling you they don't have money for ink to use on their stamp for signing documents to be filed. So, they either tell you to wait till whenever those materials are provided by the government or you pay for them. When you eventually succeed in getting your matter filed, you faced with another challenge of having it assigned to a court because of shortage of judicial officers. Many of the judges handle as much as 600 to 1000 cases in some of the States.⁵² There also appears to be unhealthy rivalry amongst the various stakeholders in the exercise of their powers.

Funding of the Council

States have been obligated under international law to allocate the necessary human and financial resources to the legal aid system.⁵³ According to *Section 46* of the Constitution of the Federal Republic of Nigeria, the Council is funded mainly by the Federal Government of Nigeria through funds appropriated annually by the National Assembly.⁵⁴ In addition to that, there are also funds allocated to legal aid as well as access to justice by states of the Federation, including the Federal Capital Territory. It can also accept donations from individuals and bodies apart from the general funds allocated except where acceptance of such gifts would be inconsistent with its functions.⁵⁵ However, it has been observed that the funds appropriated by the National Assembly have been grossly inadequate to effectively fund the operations of the Council.⁵⁶ The sums so allocated or appropriated to the Council shall be paid into the Legal Aid General Fund established by the Act for the day-to-day administration of the Council into which shall be paid the sums.⁵⁷ Lack of

⁵⁰ Section 16

⁵¹ Section 17 of the Act

⁵² Imo State is a perfect example of this situation.

⁵³ Principle 15

⁵⁴ 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁵⁵ Sections 9 and 12 of the Legal Aid Act

⁵⁶ Gbolagunte, O., 'Refurbishment of Legal Aid in Nigeria', in Adebayoa, A. A., Ugowe, A. O., 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act', [2019] *Brawijaya Law Journal* (Vol. 6 No.2)

⁵⁷ Section 9

sufficient funding is the centre of all limitations being faced by the Council ranging from lack of manpower to lack of adequate facilities. Even when these funds are made available, the difficulty and bureaucracy involved in accessing them is a different challenge altogether. There seems to be no much funds generated by the Council through non-governmental organisations and private persons owing to lack of publicity.

Accessibility of the Services of the Council

In a bid to make justice more accessible to indigent members of the Nigerian society, the Act provided for the establishment of zonal offices in each geopolitical zone of the country. The zonal office is headed by an officer who coordinates the state offices in the zone.⁵⁸ The Zonal Officer is responsible to the Director of Litigation.⁵⁹ The Council has a presence in each state in the country and state offices are coordinated by an officer who is responsible for activities in the state. The state coordinators report to the zonal officer in charge of such a state. The three legal services units of the Council are operated in the state offices, that is, Criminal Defense; Civil Litigation and Community Legal Service.⁶⁰ However, there is the need for a better geographical spread of the offices of the Council to make justice more accessible to the doorstep of the indigents. For instance, in some states, the office of the Council is only located in the capital while persons in the hinterlands and other remote areas of the state who may not have the wherewithal to get to the capital will be denied access to justice.⁶¹ In fact the actual persons in need of legal aid are not found in urban areas. They are usually found in the rural areas and situating the Council only in the state capital will definitely shut them out of access to the services offered by the Council. One of the purposes of legal aid is to bring justice down to the grassroots. *Principle 10(33)* of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly the reaffirms this: 'States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups'.

Cost of justice

As earlier stated in this work, justice is not free in Nigeria, not in the court, not in the police, not anywhere. Even at the localities where justice under native law and customs are administered, justice is still not free; where parties are asked to buy kolanuts and drinks as requirements to the presentation of their case before local arbitral panels. To ensure that the objectives of the Council are adequately fulfilled, the legal Aid Act has tried to mitigate the financial burden involved in initiating or defending a matter before a court of law by waiving payment of fees for matters coming from the Council.⁶² While this is commendable, in practical terms, only filing fees are waived for such matters and this is not enough to grant an indigent person access to justice as there are other fees which a litigant is expected to pay to have his processes properly placed before the courts. The rest of the fees such as service fee, fees for compilation and transmission of appeal where the matter is to go on appeal etc, are sometimes paid by the legal practitioners from their personal purses. The Legal Practitioners are usually expected to mobilise the Court Bailiffs to effect service. Where they fail to do so, their processes are usually left unattended to thereby clogging the wheel of justice. Sometimes, persons employed to process these documents insist on being given money unofficially before they can attend to those documents. Many of them give reasons of lack of materials to work with which they have individually undertaken to provide from their personal purses. In practice, filing fees are paid for in respect of civil proceedings.

Liability of legal aid service providers

States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of those they are representing.⁶³ Thus, there should be a framework that allows legal aid beneficiaries the opportunity to report any dissatisfaction with the services of the Council or any of its staff for necessary disciplinary actions to be taken to address such issues. Where disciplinary complaints against legal aid providers are made, they should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.⁶⁴ Section 18(3) of the Act provides that it shall be a professional misconduct for any legal practitioner to abandon or otherwise neglect such cases taken up on *pro bono* by him. This rule only applies to private legal practitioners. The question that arises is what happens to a counsel employed in the Council and the other paralegal staff where they fail to discharge their duties diligently, are they not subject to liability? The Act is silent on this, *albeit*, for legal practitioners, they

⁵⁸ Section 6

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Gbolagunte, O., *op.cit*

⁶² Section 10(6) of the Act

⁶³ Principle 13(37)

⁶⁴ Principle 13 (38)

can still be subject to disciplinary action under the Rules of Professional Conduct. Merely carrying out disciplinary actions against a defaulting practitioner is not enough to remedy any wrong suffered by a person for the practitioner's lack of diligence in handling his case. Such wrongs should be compensated monetarily.

6. Action Plan

An action plan is a detailed plan outlining actions needed to reach one or more goals. Alternatively, it can be defined as a 'sequence of steps that must be taken, or activities that must be performed well, for a strategy to succeed.'⁶⁵ These include:

Adequate funding is the propellant of productivity in the actualisation of the objectives of the Council. Funds are needed for the employment and maintenance of more staff both legal and paralegal in the Council to offer the diverse services contemplated by the Legal Aid Act. Funds are also needed to ensure that not only will access to justice be granted to all but to see that justice is equally served at the end of the day. So many cases have been abandoned half way by Legal Practitioners with the Council due to the financial burdens arising from the matters. It is recommended that all fees payable for the prosecution or defence of a matter on behalf of an indigent person be totally scrapped. This includes service charges and all other charges both in criminal and civil proceedings. A section of the court should be set aside with special staff to attend to matters from the Council to ensure that the unnecessary bureaucratic bottlenecks are totally removed. The non-payment of fees should also be expressly provided for and enforced in other institutions involved in justice delivery.⁶⁶

Expansion of the Scope of Responsibilities

Limitation of the cases the Council to offences contained in the Criminal and Penal Codes, suggests that where the same offences are committed under other criminal laws such as the EFCC Act, Violence against Persons (Prohibition) Act etc, the Council is not empowered to handle them. The same applies to civil case where matters to be handle by the Council are limited. It is recommended that the 2nd Schedule to the Legal; Aid Act, 2011 be amended to allow for free legal services for all offences and for civil matters subject only to the fact that the person seeking such service is indigent. The functions of the Council should not be restricted to the courtrooms as it is obviously becoming the practice. Legal aid providers should extend legal assistance to other institutions where administration of justice takes place. The Council should endeavour to utilise all legal options in resolving disputes before resorting to litigation. Litigation should always be the last option. This will further decongest the court, police and the correctional service and in turn reducing the enormous burden of touring the courts in the federation. It starts the moment there is a need for legal representation and whenever justice is to be served whether at the police or any other institution.

Employment of Sufficient Manpower and Improvement of Conditions of Service

The staff strength of the Council even with the limited scope of responsibilities is low as a result of inadequate remuneration and conditions of service. It is therefore, recommended that the remuneration of staff of the Council be enhanced and consistent paid. Provision for hazard allowance, transportation allowance and funds for research should be added to their emoluments to make the job attractive to competent hands to undertake. The Council should reduce reliance on Youth Corps members and endeavour to employ more experienced lawyers mainly on permanent basis where they can fully concentrate on the matters of the Council.

Constant and Consistent Sensitisation of the Public on the Services of the Council

It is also recommended that the Council engage in constant and consistent publicity of their existence and services down to the grass root. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means.⁶⁷

Nearness of the Council to the persons who need these services

The Council should have established offices at the different local government areas for easy accessibility to the people who really need legal aid.

Prompt and effective provision of legal aid

Government should provide the necessary facilities to enable the Council deliver legal aid promptly and effectively at all stages of the justice process. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for indigent persons and adequate time and facilities to prepare their defence.

⁶⁵ Action Plan, <https://en.wikipedia.org/wiki/Action_plan> accessed on 30/11/2021

⁶⁶ Section 10(6)

⁶⁷ See Guideline 2(42)

Partnership with relevant stakeholders and other legal aid providers

It is necessary to devise strategies to foster synergies between the Legal Aid Council and private legal practitioners because the Council in its current state is unable to achieve its mandate of providing qualitative and quantitative service to the teeming millions of poor and vulnerable members of the public.¹⁰ Although the Government funds Legal aid, while pro bono services are uncompensated, pro bono services are a necessary supplement to legal aid because unmet needs continue to exist in every society. To simplify access to justice, it has been recommended that the Government works closely with pro bono service providers to ensure legal needs are met as best as possible.¹¹ The challenge of providing legal assistance requires the participation of a variety of legal service providers as well as partnership with a wide range of stakeholders for the actualisation of a just and fair criminal justice system. Free legal services by lawyers will not solve the problems of access to justice as justice entails more than just access to a lawyer. Indeed, access to a lawyer is merely an aspect of the wider justice delivery process. For provision of pro bono legal services to impact on the speed and quality of justice delivery, the investigating, adjudicating and prosecutorial agencies need to actively embrace their roles. Other stakeholders in the adequate discharge of the mandate of the Legal Aid Council of Nigeria are as follows: the Nigeria Police Force, the Ministries of Justice, the Federal and States Judiciaries, and the Nigerian Prisons Service.⁶⁸ This synergy is very important as the work load of the Council is enormous when considered side by side with its staff strength.

Effective Monitoring Mechanisms

Measures should be put in place to supervise the activities of the legal aid providers and monitor their progress.

Liabilities of the Staff of the Council or the Legal Practitioner

In addition to disciplinary actions by the relevant professional bodies, where a Legal practitioner or staff of the Council defaults in the discharge of his duties under the legal aid scheme, the person affected by that default should have some legal remedies in form of damages against him.

Special assistance should be accorded members of the vulnerable group

It is observed that little or no mention was made about the child, persons with disabilities women and other vulnerable persons in the Legal Aid Act. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

Independence and protection of legal aid providers

Government should ensure that legal aid providers are able to carry out their work effectively, freely and independently without intimidation, hindrance, harassment or improper interference and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Reduction in the poverty rate of the people

Government should ensure that the great percentage of the populace is economically empowered by providing employment and the enabling environment for businesses to thrive. This will in effect reduce the number of indigent persons in need of legal aid and the burden on government in funding such aid. 'to think that a very poor person can have a meaningful day in court in the pursuit of his right, real or imaginary, is to live in a fool's paradise'.⁶⁹ Most of the rights entrenched in our constitution are nothing more than empty words to millions of our people who are or whose children are suffering and in some cases dying of malnutrition and other preventable diseases associated with the poverty.

7. Conclusion

The establishment of the Legal Aid Council is a step in the right direction of providing access to justice. The efforts of the Council are notable in ensuring that the right to legal representation of a person is guaranteed at all times. However, as observed above, much still needs to be done to enhance the progress of the Council in the fulfilment of its objectives.

⁶⁸ Anyanru, A., 'A Review of Salient Issues in the Interplay between Legal Aid and Pro Bono Legal Services in Nigeria', <<https://www.mondaq.com/nigeria/human-rights/679804/a-review-of-salient-issues-in-the-interplay-between-legal-aid-and-pro-bono-legal-services-in-nigeria>> accessed on 29/11/2021.

⁶⁹ Aguda, A., A Nigeria Perspective in Law and Justice in Nigeria, National Institute for Policy and Strategic Studies, Distinguished Lecture Series, 8 October, 1986, p.8